

September 24, 2007

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Appeal*

Name of Petitioner: Barbara Moran

Date of Filing: August 13, 2007

Case Number: TFA-0220

On August 13, 2007, Barbara Moran filed an Appeal from a final determination that the National Nuclear Security Administration Service Center (NNSA) of the Department of Energy (DOE) issued on July 24, 2007. That determination concerned a request for information that Ms. Moran filed pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. If the present Appeal were granted, NNSA would be required to conduct a further search for responsive documents.

*Background*

Ms. Moran submitted a FOIA request for “twelve DOE documents concerning the radiological monitoring of Palomares, Spain.” Letter from Ms. Moran to NNSA, October 26, 2006. NNSA responded that they could find “no records responsive to [Ms. Moran’s] request.” Determination Letter, July 24, 2007.<sup>1</sup> Ms. Moran appealed that determination to the Office of Hearings and Appeals (OHA). Appeal Letter, received August 13, 2007. In her Appeal, Ms. Moran states that, “I do not believe that [NNSA] conducted a thorough search [for the documents I requested], and would like to appeal their inability to locate the records.” *Id.*

*Analysis*

In responding to a request for information filed under the FOIA, it is well-established that an agency must “conduct[] a search reasonably calculated to uncover all relevant documents. . . .” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). “[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Dep’t of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search

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<sup>1</sup> NNSA did state that it found a videotape regarding the Palomares incident and provided it to Ms. Moran, although Ms. Moran had not included the videotape in her original document request. *See* Determination Letter.

conducted was in fact inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (2002) (Case No. VFA-0760) (remanding for a renewed search where DOE's initial search missed responsive documents that were later found);<sup>2</sup> *Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (1995) (Case No. VFA-0098) (remanding where there was "a reasonable possibility" that responsive documents existed at an unsearched location).

In response to Ms. Moran's Appeal, we contacted NNSA to evaluate its search. NNSA stated that it determined that Sandia National Laboratories (Sandia) was the only location likely to have the information that Ms. Moran requested. NNSA informed us that Sandia searched the electronic databases for four data collections that might reasonably contain responsive information: 1) Corporate Archives, 2) Technology Library, 3) Inactive Records, and 4) Nuclear Safety Information Center. Sandia searched using the documents' titles, dates, and major subject words (such as "Palomares"). *See* E-mail from Shirley Peterson, NNSA, to David M. Petrush, OHA, September 10, 2007, and Memorandum of Telephone Conversation among Shirley Peterson, David M. Petrush, and others, September 10, 2007.

NNSA's search meets *Truitt* and *Miller*'s "reasonableness" standard because in searching its electronic databases, Sandia performed a thorough search at the only location likely to have the documents Ms. Moran sought. Therefore, we find that NNSA's search was adequate under the FOIA. Accordingly, Ms. Moran's Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Barbara Moran, on August 13, 2007, Case No. TFA-0220, is hereby denied.
- (2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provision of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district where the requester resides or has a principal place of business or in which the agency records are situated or in the District of Columbia.

William M. Schwartz  
Senior FOIA Official  
Office of Hearings and Appeals

Date: September 24, 2007

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<sup>2</sup> All OHAdecisions issued after November 19, 1996 may be accessed at <http://www.oha.doe.gov/foia1.asp>.